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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,671	10/30/2003	Sumit Roy	200313242-1	3556

22879 7590 09/08/2009

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EXAMINER
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CHANG, JULIAN

ART UNIT	PAPER NUMBER
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2452

NOTIFICATION DATE	DELIVERY MODE
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09/08/2009

ELECTRONIC

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/698,671  
Filing Date: October 30, 2003  
Appellant(s): ROY ET AL.

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John P. Wagner, Jr.  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 06/17/09 appealing from the Office action mailed 02/18/09.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The amendment after final rejection filed on 06/17/09 (along with Appeal Brief) has been entered.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**GROUND OF REJECTION NOT ON REVIEW**

The following grounds of rejection have not been withdrawn by the examiner, but they are not under review on appeal because they have not been presented for review in the appellant's brief.

Claims 1, 6-8, 10, 11, 13, 16-19, 23-26, 30-33, 36, 37, 39 and 40 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 4, 8-10, 13, 14, 16, 29, 30, 31-34, 38, 39 and 41 of copending Application No. 10/698,810 in view of Agnoli.

#### **(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

#### **(8) Evidence Relied Upon**

2003/0158913	Agnoli et al.	08-2003
7,171,206	Wu	01-2007
6,421,733	Tso et al.	07-2002
2003/0046396	Richter et al.	03-2003
6,407,680	Lai et al.	06-2002

#### **(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

**Claims 1-3, 6, 8, 10-12, 14, 16, 18, 33, 34 and 36-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pub. No. 2003/0158913 (“Agnoli”), and further in view of U.S. Pat. No. 7,171,206 (“Wu”).**

Regarding claims 1 and 33, Agnoli teaches a method comprising:

identifying a type of service to be performed on an item of content, wherein said item of content is identified during a request involving a client device (Agnoli: para. [0027]);

using an estimate of resources associated with performing said service to select a provider from a plurality of providers capable of performing said service (Agnoli: ‘considers the processing load that will be created by the transcoding task’, para. [0029]); and

providing information for transferring said request to said provider, wherein said provider performs said service on said item of content upon being transferred said request (Agnoli: ‘initiates a transcode task at a transcoding server’, para [0085]; ‘...then performs the transcode task in the manner specified...’ para. [0086]).

Agnoli fails to teach transferring a session. Wu teaches transferring a session for transcoding purposes (abstract). It would have been obvious to one of ordinary skill in the art at the time of applicant’s invention to transfer sessions instead of requests as taught by Wu in order to increase efficiency.

Regarding claims 11 and 37, Agnoli teaches a method comprising:

identifying a type of service to be performed on an item of content, wherein said item of content is identified during a request involving a client device (Agnoli: 'specifies one of several types of processing, depending on the media content requested', para. [0027]);

maintaining a record comprising resources associated with a plurality of providers capable of performing said service (Agnoli: 'maintain accurate load values for all servers', para. [0098]; see also paras [0094]—[0104]); and

selecting a provider from said plurality of providers based on information in said record (Agnoli: 'allocation of the transcoding task to a particular transcoding server...', para. [0096]; see also paras [0094]—[0104]), wherein said request is transferred to said provider, wherein data for said item of content are streamed from a source to said provider and wherein service result data are streamed from said provider to said client device (Agnoli: 'Source media content is obtained from an origin server...', para [0085]; 'resulting transcoded media content is then sent to a distribution server...passes the transcoded media content to publishing...which forwards the transcoded media content to client', para. [0086]).

Agnoli fails to teach transferring a session. Wu teaches transferring a session for transcoding purposes (abstract). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to transfer sessions instead of requests as taught by Wu in order to increase efficiency.

Regarding claims 2 and 14, Agnoli-Wu teaches the invention substantially as claimed and described in claims 1 and 11 above, including estimating computational resources associated with performing a service (Agnoli: 'CPU load', para. [0097]).

Regarding claims 3 and 34, Agnoli-Wu teaches the invention substantially as claimed and described in claims 2 and 33 above, including:

- maintaining a record comprising resources available at each provider (Agnoli: 'record ...statistics on their load (e.g., average CPU load, maximum CPU load) into a database', para [0097]); and

- selecting said provider according to said record (Agnoli: 'allocation of the transcoding task to a particular transcoding server...', para. [0096]; see also paras [0094]—[0104]).

Regarding claims 6, 16, 36 and 39, Agnoli-Wu teaches the invention substantially as claimed and described in claims 1, 11, 33 and 37 above, including:

- maintaining a record comprising providers to which sessions have been transferred (Agnoli: 'tracks the state of new tasks...calculates server load as the measured current sever load plus the load estimate for each of the newly allocated tasks on that transcoding server', para. [0099]); and

selecting said provider according to said record (Agnoli: 'allocation of the transcoding task to a particular transcoding server...', para. [0096]; see also paras [0094]—[0104]).

Regarding claims 8 and 18, Agnoli-Wu teaches the invention substantially as claimed and described in claims 1 and 11 above, including receiving an indication from a provider that a service is completed (Agnoli: 'Upon completion...', para. [0097]).

Regarding claim 10, Agnoli-Wu teaches the invention substantially as claimed and described in claim 1 above, including identifying a source of an item of content, wherein data for said item of content are streamed from said source to a provider and wherein service result data are streamed from said provider to a client device (Agnoli: 'Source media content is obtained from an origin server...', para [0085]; 'resulting transcoded media content is then sent to a distribution server...passes the transcoded media content to publishing...which forwards the transcoded media content to client', para. [0086]).

Regarding claims 12 and 38, Agnoli-Wu teaches the invention substantially as claimed and described in claims 11 and 37 above, including:



estimating resources associated with performing a service (Agnoli: 'considers the processing load that will be created by the transcoding task', para. [0029]; see also para. [0097]); and

updating a record to reflect a change in resources associated with said provider based on said provider performing said service (Agnoli: 'tracks the state of new tasks...calculates server load as the measured current sever load plus the load estimate for each of the newly allocated tasks on that transcoding server', para. [0099]).

**Claims 4, 5, 15 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Agnoli-Wu as applied to claims 1, 11 and 33 above, and further in view of U.S. Pat. No. 6,421,733 ("Tso").**

Regarding claims 4, 5, 15 and 35, Agnoli-Wu teaches the invention substantially as claimed and described in claim 1, 11 and 33 above, but fails to teach selecting a provider based on the estimated bandwidth associated with a session and the amount of bandwidth available at each provider. However, Tso teaches selecting a service provider based on bandwidth (Col. 7, lines 15-67).

It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to allocate content delivery resources based on bandwidth as taught by Tso in order to account for any bandwidth guarantees.

**Claims 7, 17 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Agnoli-Wu as applied to claims 1, 11 and 37 above, and further in view of U.S. Pub. No. 2003/0046396 (“Richter”).**

Regarding claims 7, 17 and 40, Agnoli-Wu teaches the invention substantially as claimed and described in claim 1, 11 and 37 above, but fails to teach estimating the duration of a session. However, Richter teaches load-balancing content delivery resources based on the duration of an event (Para. [0262]).

It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to allocate content delivery resources based on the duration of an event as taught by Richter in order to account for the duration of time resources will be in use.

**Claims 9 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Agnoli-Wu as applied to claims 1 and 11 above, and further in view of U.S. Pat. No. 6,407,680 (“Lai”).**

Regarding claims 9 and 13, Agnoli-Wu teaches the invention substantially as claimed and described in claim 1 and 11 above, but fails to teach redirecting a client to a provider. However, Lai teaches redirecting a viewer client to the appropriate server from which to receive the requested media content (Col. 9, lines 1-15).

It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to redirect a client to a streaming server as taught by Lai in order to stream media directly, thereby reducing transmission time.

**Claims 26-30 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Agnoli-Wu, and further in view of Tso.**

Regarding claim 26, Agnoli-Wu teaches a system comprising a service manager for selecting a provider from a plurality of providers, each provider capable of performing a service on an item of content, wherein said service manager maintains a record comprising resources associated with said providers (paras [0094]—[0104]) and wherein said service manager uses an estimate of resources associated with performing said service to select said provider according to information in said record (para. [0029]), wherein data for said item of content are streamed from a source to said provider and wherein service result data are streamed from said provider to said client device (paras [0084] - [0086]).

Agnoli fails to teach receiving a request for an item of content from a portal, wherein said portal received said request from said client device. However, Tso teaches receiving a request at a portal from a client device (Col. 9, line 49-65).

It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to use a portal as taught by Tso in order to provide a client device an interface to access a server.

Regarding claim 27, Agnoli-Wu-Tso teaches the invention substantially as claimed and described in claim 26 above, including updating a record to reflect a change in resources associated with a provider based on said provider performing a service (Agnoli: para. [0099]).

Regarding claim 28, Agnoli-Wu-Tso teaches the invention substantially as claimed and described in claim 26 above, including estimating computational resources associated with performing a service (Agnoli: para. [0097]).

Regarding claim 29, Agnoli-Wu-Tso teaches the invention substantially as claimed and described in claim 26 above, including selecting a service provider based on bandwidth (Tso: Col. 7, lines 15-67).

Regarding claim 30, Agnoli-Wu-Tso teaches the invention substantially as claimed and described in claim 26 above, including maintaining a record comprising providers to which sessions have been transferred (Agnoli: para. [0099]).

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Regarding claim 32, Agnoli-Wu-Tso teaches the invention substantially as claimed and described in claim 26 above, including receiving an indication from a provider that a service is completed (Agnoli: para. [0097]).

**Claim 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Agnoli-Wu-Tso as applied to claim 26 above, and further in view of Richter.**

Regarding claim 31, Agnoli-Wu-Tso teaches the invention substantially as claimed and described in claim 26 above, but fails to teach estimating the amount of time for a provider to perform a service. However, Richter teaches load-balancing content delivery resources based on the duration of an event (Para. [0262]).

It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to allocate content delivery resources based on the duration of an event as taught by Richter in order to account for the duration of time resources will be in use.

**Claims 1, 6-8, 10, 11, 13, 16-19, 23-26, 30-33, 36, 37, 39 and 40 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 4, 8-10, 13, 14, 16, 29, 30, 31-34, 38, 39 and 41 of copending Application No. 10/698,810 in view of Agnoli.**

The instant application differs from the '810 application in that the instant application uses an estimate of resources associated with performing a service to select a service provider. This difference is rendered obvious in view of Agnoli as shown above.

This is a provisional obviousness-type double patenting rejection.

#### **(10) Response to Argument**

Appellant argues that Agnoli teaches away from "providing information for transferring [a] session to [a] provider". (Brief 12). In particular, appellant argues that by specifically disclosing that the publishing server farm executes the delivery of the desired media content and forwards transcoded media content, Agnoli teaches away from the claimed embodiments. (Brief 13). Appellant argues that there is no motivation to combine Agnoli with Wu because Agnoli teaches away from the claimed embodiments.

Appellant's arguments are not persuasive because Agnoli does not teach away from the claimed embodiments. The mere fact that the publishing server farm executes the delivery of the desired media content and forwards transcoded media content does not preclude the server farm from transferring a session. Since the publishing server farm comprises a plurality of servers, a session may still be transferred between servers within the server farm. Agnoli discloses that transcoding tasks are allocated to transcoding servers based on load. (para.

[0029]). Agnoli is silent as to allocation is performed, but one of ordinary skill in the art would understand that such allocation may be performed in various ways, including through redirecting and forwarding.

Appellant's arguments are also not persuasive because Agnoli is silent with regard to transferring a session, and therefore cannot teach away from transferring a session. Agnoli contains no mention of transferring sessions, or even the word "session". Appellant contends that Agnoli is not silent with regard to transferring sessions because the publishing service farm acts as an intermediate between the origin servers and the user client. (Brief 15). The fact that the publishing service farm acts as an intermediary has no bearing on whether a session can be transferred. In fact, the transcoding proxies of Wu also act as intermediaries, yet are capable of transferring sessions.

Appellant contends that the publishing service request processor maintains a connection with the requesting client. (Brief 12). Appellant has not provided any citation to Agnoli to support this assertion. The Office was unable to find any support for such an assertion.

Appellant's remaining arguments are not expressly addressed herein because they depend directly on the argument that Agnoli teaches away from the claimed embodiments.

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**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/J. C./

Examiner, Art Unit 2452

/John Follansbee/

Supervisory Patent Examiner, Art Unit 2451

Conferees:

/William C. Vaughn, Jr./

Supervisory Patent Examiner, Art Unit 2444

/John Follansbee/

Supervisory Patent Examiner, Art Unit 2451